

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs October 6, 2009

IN RE: CHASE S., ET AL.

Appeal from the Chancery Court for Blount County
No. 07-081 David R. Duggan, Judge, Sitting By Interchange

No. E2009-00773-COA-R3-PT - FILED DECEMBER 18, 2009

Victoria S. ("Foster Mother") filed a petition for adoption and the termination of the parental rights of Benjamin S. ("Father") and Amber S. ("Mother") to the minor children Chase S. and Breanna S. ("the Children"). The State of Tennessee Department of Children's Services ("DCS") joined in Foster Mother's petition. Mother did not answer the petition and a default judgment was entered terminating Mother's parental rights to the Children. This judgment was not appealed. Father answered the petition and the case was tried. After trial, the Trial Court entered an order finding and holding, *inter alia*, that clear and convincing evidence existed to terminate Father's parental rights to the Children pursuant to Tenn. Code Ann. §§ 36-1-113(g)(1) and (g)(3), and that it was in the best interest of the Children for Father's parental rights to be terminated. Father appeals the termination of his parental rights to the Children. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Lance A. Evans, Maryville, Tennessee for the Appellant, Benjamin S.

Dawn Coppock, Strawberry Plains, Tennessee for the Appellee, Victoria S.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Jill Z. Grim, Assistant Attorney General; for the State of Tennessee Department of Children's Services.

Robert L. Huddleston, Knoxville, Tennessee, Guardian Ad Litem.

OPINION

Background

The Children were taken into State custody in November of 2005 after Breanna, Father, and Mother, who was pregnant with Chase at the time, were involved in a single vehicle automobile accident. Father, who was driving the vehicle on a suspended license, allegedly was drunk and using drugs. Mother admitted to hospital staff that she had been using OxyContin. Mother went into premature labor as a result of the accident and Chase was born premature and drug-dependent. Initially, when Chase was released from the hospital, the Children were placed with Father's mother ("Grandmother"). However, the Children were later removed from Grandmother's care after issues arose regarding the whereabouts of the Children. The Children then were placed in Foster Mother's home.

In July of 2007, Foster Mother filed her petition seeking to terminate Father's and Mother's parental rights and to adopt the Children. DCS joined in Foster Mother's petition. Grandmother filed a motion to intervene in the suit and filed her own petition seeking to terminate Father's and Mother's parental rights and to adopt the Children herself. Mother did not answer Foster Mother's petition and a default judgment was entered terminating Mother's parental rights to the Children. Mother did not appeal and this judgment became final. The case proceeded to trial. During trial, Grandmother withdrew her petition.

Max Russell, a Child Protective Service Investigator with DCS, testified at trial. Mr. Russell has been an investigator with DCS for thirteen years. He investigates allegations of child abuse. Mr. Russell visited the hospital to investigate when Chase was born drug-dependent. Mr. Russell testified that he obtained the micronium test results for Chase, which showed positive for opiates. Mr. Russell asked Father to take a drug test, but Father refused. Mr. Russell testified that Father "was belligerent and hostile and just refused to cooperate" with the investigation.

Carol Davis, a DCS Family Service Worker, or case manager, who worked on the Children's case, also testified at trial. Ms. Davis explained that six DCS case workers have worked on this case during the three years the Children have been in custody. Ms. Davis was the case manager from February of 2007 until September of 2007.

Ms. Davis testified that the Children were placed with Grandmother when they first came into custody. However, issues arose about Grandmother's leaving the Children with someone other than the DCS approved care-provider while Grandmother was at work. The Children stayed with Grandmother for a few days and then were moved into foster care. They went to Foster Mother's home and have been there continuously since then.

Ms. Davis testified that the Children were taken into custody because:

The family had been in a car accident. And as a result of that accident, the children's mother had gone into premature labor. And Chase was born as a result. And he was premature, weighing just over four pounds. And at the time of his delivery, his mother admitted that she had been using drugs[.]

Ms. Davis testified that as they began working with the family, the DCS caseworkers noticed: "The family was evasive as far as income, employment, stable housing, independent housing on their own." A Tennessee Early Intervention Service evaluation was done on the Children shortly after they were taken into custody. The evaluation for Breanna showed developmental delays of up to five or six months behind her chronological age on several of the tested levels. Ms. Davis testified that in order for DCS to obtain services to address developmental delays the parents need to sign permission forms. Neither Father nor Mother signed such permission forms. When the Children were evaluated after they came into custody the diagnoses and recommended treatments were discussed with the parents and Ms. Davis stated that the parents "felt like they were exaggerated, that the children didn't have those problems when they entered custody." When asked, Ms. Davis testified that there is no indication in the DCS record for the Children that Foster Mother ever failed to follow through with the directions from medical care providers.

Ms. Davis testified that an initial plan meeting was held on December 15, 2005 to prepare a permanency plan for the Children. Father and Mother were notified about this meeting, but did not attend. Under the permanency plan, Father was to obtain and maintain stable housing, a legal source of income, and reliable transportation; to complete an alcohol and drug assessment and follow all recommendations; to complete a mental health assessment and follow all recommendations; to complete age-appropriate parenting classes and demonstrate skills learned; and to provide proof that he had completed these tasks. Father did complete an alcohol and drug assessment. A second permanency plan later was created. In the second permanency plan, the requirement for Father to obtain a mental health assessment was deleted and a new action step of resolving legal issues and not incurring any more was added. A third permanency plan was created. Father's requirements under the third permanency plan were unchanged. Father refused to sign the permanency plans.

Ms. Davis testified about Father's lack of progress toward the steps on the permanency plans. Father never had a clean drug screen with DCS. On February 21, 2006, Father and Mother showed up for a visit with the Children and appeared to be under the influence. They were drug tested and Father tested positive for opiates. An evaluation of Father was done by Bradford and in that evaluation there was a recommendation that Father turn over his pain pills to DCS, but Father did not do so. Father told DCS that he had employment and had to schedule visitation with the Children around that, but when DCS checked, Father was not employed where he said he was. Ms. Davis testified that she was not aware of any money, cards, letters, or gifts that Father had sent to the Children while the Children have been in custody.

Ms. Davis testified about a progress review meeting that was held at the Sevier County jail on February 2, 2007, where Father was incarcerated at the time. In attendance at this meeting were Mother, Mother's attorney, Father, Grandmother, Foster Mother, Brenda P., and Ms. McCoy who was the Children's guardian ad litem at that time. Ms. Davis testified:

[Father] stated that he had something to say and he cursed everyone out. He said, 'F[- -] you, you fat a[- - -], to the foster parents, [Mother], and GAL, showing the middle finger while cursing. He also called Heather McCoy a, 'b[- - -].'

The guard was outside the door. And the team members asked that [Father] be removed from the meeting due to his inappropriate behavior.

When asked if she believed that Father was open to rehabilitation and training based upon her experience with him, Ms. Davis testified: “[Father’s] presentation at the jail seemed, to me, to be very angry, very blaming, and not focused on his future, or his future with his children.” Father was in jail the entire time that Ms. Davis was the case manager.

Ms. Davis testified that a case recording from March 22, 2006 documented a meeting with Robert S., the Children’s paternal grandfather (“Grandfather”). Ms. Davis testified that the note states:

[Grandfather] told this case manager that [Father] had been doing drugs for years, and that every place [Father] goes, ‘Something turns up missing.’

[Father] has recently stole (sic.) from both his and [Grandmother’s] homes. [Grandfather] told this case manager that [Father] told his brother that he had, ‘Accidently picked up this case manager’s keys in the office the night of a visit thinking they were [Mother’s] car keys.’

The police went out to [Father’s] house that evening and [Father] denied taking them. [Grandfather] said [Father] would never admit to taking them. And his brother Robbie would never admit that [Father] told him that.... [Grandfather] told this case manager that [Father] has been out of control since he was in high school. [Grandfather] said he tried to get custody of [Father] and his brother, but his ex-wife, [Grandmother], got custody and exposed the boys to abusive and drug-using boyfriends.

[Grandfather] told this case manager that [Grandmother] and one of her boyfriends did drugs with [Father] and his brother. One of [Grandmother’s] boyfriends overdosed on Oxycontin and died.... [Grandfather] told this case manager that he had not expressed interest in getting custody of the children until now because he was, ‘Waiting for [Father] and [Mother] to do the right thing.’

April Barker, a Resource Parent Support worker for DCS, testified at trial. Ms. Barker explained that the case manager is responsible for overseeing the children in the home and that she as a Resource Parent Support worker represents the foster family and makes sure the foster family “is in order as well.” Ms. Barker has worked with Foster Mother for approximately four years and has been in Foster Mother’s home fifteen times. Brenda P.¹ lives in Foster Mother’s home and Ms. Barker did the same type of investigation on Brenda as was done on Foster Mother.

¹For ease of reading we refer to Brenda P. in the remainder of this Opinion by her first name only. No disrespect is intended.

Although there are allegations that Foster Mother and Brenda are having a romantic relationship, Ms. Barker does not believe these allegations.

Prior to becoming the foster parent to the Children, Foster Mother had been a foster parent to three other children. Two of those other children went back home and Ms. Barker testified that Foster Mother cooperated with the birth parents to allow this to happen.

When asked to rate Foster Mother's home in terms of care with regard to other foster homes, Ms. Barker stated:

I think over my years working with them, I would elevate them above normal. And I think part of that is because of the training that both of them have through their educations and their jobs.

[Foster Mother] is in tune with the children's emotional needs. Whereas Brenda is in tune with health needs because she's a nurse. So if there is one or the other to be dealt with, [Foster Mother] or Brenda were very good at tuning into those needs and seeing that they were met immediately. So they're very good at recognizing and handling things as they arise. And I think that puts them a little above normal range.

I mean, I've had no significant problems with that family at all. No corrective action with the family. No discipline issues at all. They've been very cooperative with me.

Miriam M. Weinstein, M.D., a board certified specialist in pediatric development and pediatric rehabilitation who has treated the Children, testified at trial. Dr. Weinstein explained that in the UT Neonatal Intensive Care Unit parent visits are recorded in the child's chart by each nurse during each shift. A case manager monitor periodically makes a summary of how the parents are doing in the case manager monitor's notes. The UT records reveal that Father and Mother visited Chase in the hospital only once after Mother was discharged. Chase was born on November 14th, admitted to UT on November 15th, and discharged on November 30th.

Dr. Weinstein first saw Chase as an infant because he was drug exposed and premature. She stated that her concern "was that he had poor organization of movements and what we call sensory processing problems. He was hypersensitive to touch, sound, those kinds of input." Dr. Weinstein has treated Chase continuously since that time. She stated:

Chase has a significant, and has had over the course of time since his birth, a significant number of what we call sensory processing problems.

That means that he is bothered by a lot of the textures of food. He is a picky eater. He has needed some help with that.

He's picky about textures of clothing, and things like that. He can get upset if he's in situations that give him too much sensory input. And those are things that are pretty much common for kids who have had a history of drug exposure[.]

When asked to give an example of a situation where there would be too much sensory input, Dr. Weinstein replied: "The mall. Wal-mart. A football game. Any of that sort of stuff." Dr. Weinstein explained:

[B]ecause [children with these kinds of problems] can have temper tantrums, and things like that, if they get into these situations. Because if you have to - - if you're going to take them shopping at Wal-mart, it better be at an off time that's quiet and minimize how long you stay in the mall, or how long you stay at Wal-mart.

You have to kind of change your whole lifestyle to kind of avoid these things as much as possible because it tends to be very stressful for the child. And it tends to be very stressful then for the care[-]giver when you're trying to just do things like buying milk and the child is screaming because it's just too much.... Kids with sensory problems are more at-risk for having behavioral problems. They're more at-risk if they're in a situation where nobody is trying to help them and minimize this, to be put in situations where they are screaming and yelling and they are more at-risk for abuse.

And they are also more at-risk for neglect. Because if it's trying to be interacting with them, then if you cannot leave them off in a corner somewhere, and you don't, you know, interact with them as much, then you don't have to cope with these kinds of issues.

Chase has had some speech therapy, some occupational therapy, and also some brief physical therapy to address balance problems. Dr. Weinstein testified that Chase "has done very well. He is functioning really well right now." Chase also has had problems with reflux and has needed medications for this.

Breanna was brought to Dr. Weinstein by Foster Mother. Dr. Weinstein testified:

And at that time, she was very delayed. She was not talking as much as she should. She was not using a spoon well. She was not really able to do, you know, some of the childhood play skills like stacking blocks. She could copy a straight line, but she couldn't do circular scribbles, and she was already two and three-twelfths years of age.

And these are all, you know, routine skills that she should have had. Her basic balance was not good. Her trunk strength was not good.

Breanna's developmental level when she first saw Dr. Weinstein was "from about sixteen months functionally for her fine motor skills, to about eighteen to twenty months for her speech and

language skills. And her gross motor skills were somewhat delayed, maybe this the eighteen to twenty months level as well. So she had a fairly significant degree of delay.” Dr. Weinstein testified that Breanna is having occupational and speech therapy and will continue these therapies for a while.

With regard to Breanna, Dr. Weinstein explained:

I think that Breanna probably has something called Developmental Coordination Disorder.... Developmental Coordination Disorder is very common in this part of the world. And I think when I start describing it that you are all going to start recognizing people who have it. But it is under[-]treated.

It’s a problem where children have issues with sensory processing with coordination and gross motor skills. They tend to be the clumsy kid on the playground.

When they get to school, they tend to have more problems learning. They are delayed in being able to master the alphabet, to read and write.

They are, in a sense, more vulnerable to become dropouts from the educational system, and then get into either drug[s] or criminality because they haven’t gone through high school.

And the tragedy is that often these kids not only have normal intelligence, they’re often bright. And if we intervene early, these are things that can be fixed. And then this child can be a success in life.

They will still have some of these sensory processing - - those kind of issues that I already went through that can also be caused, usually to a much greater extent, by drug exposure. But you can intervene and help them not to become another statistic.

Both Children have responded well to their therapies and Dr. Weinstein stated: “Most of my core concerns have resolved.” Dr. Weinstein testified that she has worked with Foster Mother and Brenda to coordinate the Children’s treatments and therapies and Dr. Weinstein stated “they have been very consistent and very conscientious.”

If the current level of observation and intervention is maintained, Dr. Weinstein believes that the Children will be normal functional adults. If not, Dr. Weinstein stated:

I think that they could get into trouble. The thing that’s hard to really appreciate when you look at a child like this is that the underlying nervous system, what we’ve done, in effect, is create detours around the problems.

We cannot fix the areas that were problematic in terms of the wiring. So they - - when we do longitudinal studies of children that have these kinds of issues, we see

that they still remain at-risk. And so you need to kind of keep an eye on things and do interventions that are indicated as needed.... Well, at-risk for learning problems. At-risk for behavior problems. At-risk for attention deficit disorder. Impulsivity control.

Dr. Weinstein further stated:

But let me say this, that after a child has been - - even, you know, a normally developing child with no questions about their development, if they have been in a home for three years, especially at this age, and they are disrupted from that, that is emotionally difficult for a child.... [B]ecause it affects, you know, things like trust and emotional coping mechanisms, and things like that. So that if they get into stressful situations, they may not handle them well. They may act out, or act in ways that are inappropriate.... Any child who would have this disruption after three years when they're this little to start with is, at risk [for] things like Reactive Attachment Disorder. Because they're being jerked out of one situation into one that's entirely different. And that is - - makes trust and attachment more challenging for the child the next time around.

Dr. Weinstein added that if a child had a history such as the Children have, "[t]hat would make them even more vulnerable to these kinds of problems." When asked, Dr. Weinstein admitted that any time a child is adopted there is a change and there is a risk.

Foster Mother testified that she is a licensed marriage and family therapist and has been employed as such by Helen Ross McNabb Center for eight years. She lives with the Children and Brenda, a registered nurse. The Children have lived with Foster Mother for three years and four months. Foster Mother testified that she and Brenda met at church. Foster Mother explained: "I had just moved home from New Orleans. And I was living with my parents. I had come home to take care of my parents, and was living with them, and needed a house[-]mate - - well, needed a place to live. And she needed a house[-]mate." Foster Mother denied being a lesbian or having a romantic or sexual relationship with Brenda. Foster Mother testified that she and Brenda had shared a house for approximately four years before she became a foster parent. The Children were not the first foster children that Foster Mother had in her home.

Foster Mother described that when the DCS worker first brought the Children to her home:

That night - - it was about seven o'clock in the evening - - they wreaked [sic] of cigarette smoke - - even Chase.

Breanna was filthy. Her clothes were too small. She obviously hadn't been bathed in a long time. The grandmother had not sent any formula even, for Chase. [The DCS worker] had to leave the children and go back to the store and get formula. They... oh, my goodness.

Chase was so tiny, and it was so scary. And Breanna was actually asleep at that time. But when I woke her up - - or when she woke up a little later, she was just pale, pasty.

And I looked at her and thought she looked funny. I thought she didn't look quite right.

When asked what the first six months were like with the Children in her home, Foster Mother stated:

It was probably the hardest six months of my life. I don't think I slept more than two hours at that time, because Chase didn't sleep. He screamed almost constantly. Especially if you put him in the car. I didn't know how to console him. He would arch away backwards, like a backwards taco, when you would try to hold him.

Breanna had no vocabulary. She was two years old. She turned two on December the 29th. So she was twenty-three months old.

For the first six months, she had no other vocabulary than the word "No." As she developed vocabulary, as we watched her, she was afraid of the bathtub. She was afraid of the toothbrush.

People were telling me that she might have Down's Syndrome. They were telling me that she might be retarded. She certainly lacked balance and coordination. That improved during the six months. But we - - my entire family became so exhausted.

Chase did get RSV, which is a - - to you and me, it's a cold to the infant - - especially a premature infant. It's deadly.

And during that time, we exhausted literally every member of my family. Well, not my cousins, but my mom, my sister, my mother, Brenda's mother. All of us just trying to take care of him and provide the care that he needed, plus take care of Breanna. It was almost more than we could handle.

Part of me wanted to call and ask the Department to remove the children.

When asked about the medical needs of the Children now, Foster Mother testified:

Breanna is vastly improved. She requires glasses. She has allergies. She takes Singulair for her allergies. And she goes to a gastroenterologist. And she still sees Dr. Weinstein, who is a developmental specialist, to help her with her development.

Chase also has a lot of allergies. Chase also sees Dr. Weinstein to help with the development. And Chase also still has a lot of gastrointestinal problems.

They are vastly improved. He had a long period where he didn't gain weight. Now, he doesn't tolerate high fructose corn syrup, which is in everything. He's always constipated. He has to take a laxative every day. And even then, still has trouble with constipation.

And I would like to just think, oh, well, he's just a little constipated, but he actually ended up in the hospital with his intestines almost burst over the constipation.

Chase tested positive for hepatitis C for the first year and a half, or two years of his life, but now tests negative. Breanna is not hepatitis C positive. Foster Mother testified that hepatitis is usually transferred through blood so they have to be very careful not to touch blood. Also since Chase was premature and at a high risk for RSV, Foster Mother testified that in her household they never share cups, drink after one another, or kiss on the lips.

Foster Mother described visits with Father, Mother, and the Children that she attended stating:

Initially, [Father] would show up. He would show up on time. He would be very angry, stand-offish. He didn't really want to interact or be involved. He wouldn't hold Chase. He said he was afraid of him. He was very angry.

Then he started being late. He said he had a job. And he would say he had to go home and change his muddy clothes. He would say things like that. He would say he had a job.

They called and cancelled a couple of visits. I don't remember the exact number, and would give us an excuse. But later we would find out he was in jail.

Over time - - after a period of time, we noticed that [Father] didn't seem so angry. In fact, he seemed quite mellow, to the point that he seemed uncoordinated. And we suspected that he was high.

Foster Mother had concerns about Father and Mother sharing drinks between themselves and with Breanna and also had concerns about Father and Mother kissing Chase and Breanna on the lips especially given the risk to Chase of RSV.

Foster Mother testified that Chase got upset at times and needed consoling during visits and stated:

[Mother] would try to console him for a few minutes, and then she would give up and bring him to us.

[Father] wouldn't hold Chase, or wouldn't attempt to console him, unless [Mother] would have to go do her drug screen. At which point Chase would always start crying.

[Father] would pat him for a couple of minutes on the bottom, and then he would look around and holler, "Where's them two women at?" And then he would bring Chase out and give him to us to console.

Foster Mother further testified:

[Father] always was malodorous. Not just stale cigarettes, but body odor. And his clothes were always dirty. And it just - - I mean it felt like you may as well be laying a child on... I mean, it was very dirty. Especially for him to be holding such a fragile infant.

Foster Mother further testified:

I'm asking that [Father's] rights be terminated for the sake of his children.

[Father] consistently and routinely... He didn't just reject attempts at education, attempts at helping him to regain custody of his children, sir. He engaged in, and did things, that I interpreted to be blatantly oppositional to getting his children back.

For example, the meetings - - the visits were held in the evenings from 6:00 p.m. to 8:00 p.m. Breanna needed supper. We would provide [Father] with a nutritious supper.

[Father] instead would go and give a two year-old a 20 ounce Mountain Dew and a king-size pack of Reese's cups or Slim-Jims, instead of encouraging her to eat the meal.

There were other similar behaviors that made me feel like [Father] was willing to put his children in harm's way because of his anger. And, sir, I found that frightening. I find that incredibly frightening.

I mean, I know there are technical terms, sir, that [Father] didn't follow his plan. He didn't do the things that he was supposed to do. And I'll tell you, I've been doing this a long time. And it's rare that I meet someone I can't engage. It's rare that I meet someone I can't develop at least some level of rapport with to help them accomplish some task. And I found that impossible with [Father].

And even now, [Father] acknowledges very little of his own behavior - - of his own mistakes, that have cost - - that cost his children.

Foster Mother also testified:

There were - - at that time, there were a lot of medical appointments for both children. And we made sure that [Father] had a list of the appointments.

We went - - the appointments and days, we updated them at every visit. And we asked [Father] to sign that he had gotten a copy of it.

And our goal was for [Father] to attend as many as he could, or for [Mother] to attend as many as she could.

Father did sign the sheets showing that he received a copy of these appointment lists. Father, however, did not attend any of the Children's medical appointments.

Joaniko Kohchi, a licensed clinical social worker whose training focuses on attachment relationships, testified as an expert witness. She assessed Foster Mother and the Children. Ms. Kohchi stated that "children rise to the expectations of the people who care for them. Especially the person who is most important to them as a care[-]giver in their lives." Ms. Kohchi stated:

Consistency is best. Children develop a hierarchy of attachments, so there's one primary care[-]giver. And in many families, that's the mother.

The person who is there to, and who responds regularly, to these needs that a child can cue. Disruption, so that if it's a different care[-]giver frequently, then each time there's a disruption in the primary attachment, it's a big challenge for a child.

And for some children, they can weather that once, twice. Other children can't. And it can cause lasting psychological harm.

When asked what would happen if a child has a positive attachment that is disrupted, Ms. Kohchi stated:

It's always a challenge. And it's always difficult. And it's always something that leaves a lasting impression on a child.

It's always something that will be part of what they know about the world, and how they understand the world to be.

Sometimes they can land on their feet and blend in another positive care[-]giving attachment relationship, and this will not cause them to have difficulty in trusting people in the future. Or sometimes it won't cause them to have difficulty entering into intimate relationships in the future. But it's always something that will be a challenge.

And there are some children, especially if it happens repeatedly, who will always require emotional support, and who may never quite learn how to trust.

Ms. Kohchi was asked to determine whether Foster Mother and the Children had a secure attachment relationship, and whether Foster Mother would be a good candidate as an adoptive parent. Ms. Kohchi initially observed one interaction procedure with Foster Mother and the Children, which involved structured care-giver/child play interaction and then a brief separation and reunion. Ms. Kohchi testified that she also revisited Foster Mother and the Children closer to trial. Ms. Kohchi described the interaction procedure stating:

The procedure starts with free play where the care[-]giver is instructed to play with the child as they would at home.

And you're supposed to be able so [sic] see things like level of comfort, the reciprocity of communication, things like that where there's just a good play environment. Then there are four structured tasks that increase in difficulty depending on the child's developmental level.

So the first task the child is supposed to be able to complete on their own. As the tasks increase in difficulty, they have to turn more and more to their care[-]giver.

And then you see how comfortable they are turning to the care[-]giver, how well the care[-]giver is able to respond to the, whether the care[-]giver responds to them in a way that's positive and nurturing, and guides them to complete the task, and things like that.

* * *

[Foster Mother] showed that they had a comfortable and open communication. She showed that when the children cued her, or in some way communicated that they were confused or dissatisfied, or were having difficulty staying on task, she knew them well enough to be able to respond to them in the ways that worked with them.

They were able to focus. They were able to - - to regulate their emotions. They were able to show enjoyment with her. They were able to show also that they were receptive to her guidance. So they trusted her to tell them things that were going to be true and they were going to turn out all right for them.

They showed that they were learning as they were doing these tasks as she helped them by structuring the tasks that were understandable to them[.]

Ms. Kohchi further stated:

The separation and reunion was not without a few bumps, which is to be expected. This is not because of who [Foster Mother] is, but this is because of the situation of -
- I'm thinking of Breanna.

For a child of her age who is fairly secure, who is verbal, who doesn't have significant - - significant obstacles in communicating her needs, she did not tolerate separation very well. She wasn't alone in the room for a very long time.

Often young children will say something like, "Oh, I need to go potty," when they're anxious. Breanna was anxious at [Foster Mother's] leaving the room. And this tends to happen more frequently with children who have had disruptions in trusting relationships.

So it's very likely that Breanna had been disappointed by care[-]givers in the past. Like care[-]givers who were supposed to be there for her. And she displayed anxiety when she was left by herself.

The counterpart to the separation is the reunion. And what we look for is consistency between the reaction at the separation and the way it resolves at the reunion.

When [Foster Mother] came back, Breanna was instantly engaged. There was no time where she had to - - like some kids will sit back and check out the care[-]giver, especially again in the case of the substance abusing parents where you're not sure which face is going to be shown. Children will sit back and watch. And it will take them a long time for the reunion to resolve.

Breanna took no time at all. She was back. She was happy. She was okay as long as she was there, which shows that she depended, and was confident, in [Foster Mother's] ability to help her organize things and feel comfortable again. But that she was possibly a younger developmental age in completing this.

It was probably more of what you would expect a 30-month old to do when a care[-]giver left the room, rather than a girl of her age.

So she was going back to a younger age to build the foundation for trusting relationships.

* * *

Chase was also a little bit more anxious than one would expect. But his attachment anxiety had been activated at the very beginning of the procedure.

He was able to see [Foster Mother] go down the hall and go into a room where he couldn't follow when they got there. And he got upset immediately. He already didn't want to let go of her.

So ... his separation, he was also a little bit more anxious than you would expect for a child who is in a secure relationship.

Again, however, it resolved very quickly. He was totally confident that this was the person who was going to make everything better for him. And that speaks to the security of the relationship and the quality of attachment.

Ms. Kohchi testified that she asked Foster Mother to come up with words to describe each of the Children and stated:

[Foster Mother] said that Breanna is spirited and in control. So that was just an overall descriptor.

Asked to choose five adjectives, she chose strong, independent, intelligent, happy, and sassy.

And then her examples were specific. For the word intelligent, she stated that Breanna's vocabulary and comprehension skills have increased faster than expected, and that she is writing and recognizing letters, and that she can tell who is on the other end of the telephone just by listening to one side of the conversation.

These aren't things that you can look up in a book and say, what is going to tell somebody that I have a positive attachment with this child. These are specific things that come out of her daily experience with Breanna. And that speaks to the quality of the attachment relationship.

* * *

For Chase, again, about his personality. She said that he is funny and thinks before following directions.

When asked to choose five words, she chose fun, lovable, cuddly, determined and irritable.

For the word fun, she described how he had recently gotten a tricycle for his second birthday, and talked animated about it as he attempted to mount and ride it. "Cycle." "My cycle." "Ride cycle."

Again, these are not things that you can look up in the book and say this is a definition of a secure attachment. These are specific things that come out of her daily

experience of Chase that showed she is listening to him, seeing him, knows him for who he is, and is able to enjoy him for who he is.

Ms. Kohchi stated that her opinion about the quality of the bond between Foster Mother and the Children is that “[i]t bodes well. It is a secure relation. A secure and trusting relationship where one would hope that all things being - - all opportunities being there for them, that they would grow up to be as much as they could be. That they would be able to reach their potential.” When asked if the Children have a parental figure, Ms. Kohchi replied: “Yes.... That is [Foster Mother].” She further testified that a change in care-givers “would be as if you took [the Children] from their birth family at this point.”

Father was incarcerated in the Whiteville Correctional Facility at the time of trial. Father was transported to trial by order of the Trial Court. Father testified that he was born in August of 1984. Father started using drugs: “A couple of years ago.” He claimed that he started using drugs “when I had this car wreck,” speaking of the car wreck in November of 2005, which led to the Children being taken into State custody. When asked if he was testifying that he never used drugs before the accident, Father stated: “Well, I mean. I had, you know, I was young. I might occasionally drunk a beer or something. You know, just typical young man things, you know, that you get into. I might have smoked pot a couple of times. But I didn’t have a drug addiction, no.” When asked if he had used any illegal drugs besides marijuana before the accident, Father stated: “No.” When asked if he got into trouble for having a marijuana party at his mother’s house prior to turning 18, Father stated: “They wasn’t at my mom’s house. It was at my brother’s.” Father admitted that he is taking Prilosec for heartburn and indigestion. Father also admitted that although he needs to be on psychiatric medications, he is not taking any such medications. When questioned, Father admitted that he had a drug problem with prescription pain killers prior to going to jail but denied using any other illegal drugs except “[o]n occasion, marijuana.” Father stated “I don’t do heroin. And I don’t do cocaine.” Father, however, admitted that he has track marks on his arm and showed them to the Trial Court. Father was drug tested when he showed up for visitations and he admitted that on those occasions he failed the tests. He stated: “You know, the ones that I failed, most of them was for opiates.... I think I failed one for marijuana.... That was it. That’s the only drugs I ever did.” Father did not know if he had ever had a clean drug screen. Father insisted that his drug problem was with prescription medication but he never would provide DCS with the prescription and although Father admitted that he had pills and was advised to turn over the pills, Father never did so. When asked, Father did not know his doctor’s name. Father testified that he is supposed to complete a nine month drug program, and he then will be released on parole. Father testified that he has not done drugs in jail although he stated: “You can get drugs just as easy as on the street.” He testified that he has passed all of his drug screens in jail.

Father first was arrested as an adult in 2002 for trespassing. This arrest happened two days after Father turned 18 years old. Four months after he turned 18, Father was charged with aggravated burglary. Father stated: “Yeah, I was charged with that, but it was dismissed. I didn’t commit the crime.” Father admitted that his driver’s license was suspended “[f]or travel offenses” and also admitted that he has been charged four times in Sevier County for driving on a suspended license. When pressed, Father also admitted that he has a Blount County charge for driving on a suspended license. Father admitted that he pled guilty to burglarizing Blaylock Hardware Store and

Power Tools in July of 2004. He also admitted that he had pled guilty on nine theft-related convictions. Father stated: "I haven't never given a reason to why I stole those things other than, I mean, other than, you know, just being a young man doing it to get into carelessness." When asked if he had ever committed a theft or burglary crime and did not get caught by law enforcement, Father stated: "It's obvious I'm not a good thief. Every time I got caught - - or I stole I got caught." When asked why he keeps committing these crimes, Father stated: "I don't have an answer to that. I'm not doing it anymore, that's for sure." When asked if he was going to volunteer information if the questioner did not know, Father stated: "I ain't going to volunteer nothing unless you just - - unless I mess up." When asked if he graduated from high school, Father stated that he completed the 12th grade, but he did not know if he actually graduated.

Father testified that he never has been married, but admitted that he has held himself out as married in the past. He went through a wedding ceremony with Mother, but the license was not filed. Father stated that both he and Mother were over the age of 18 when they went through the marriage ceremony. Father testified that he has not seen Mother since May 8, 2007 when he was sentenced.

When asked about his employment, Father testified that he had worked for Heritage in Sevierville building log cabins for over a year after Breanna was born and that he made "[m]aybe nine dollars an hour or something." Father further testified he worked for B&S Cleaning and that he also had his own cleaning business called ADR. Father testified that he did not know how long he worked for B&S Cleaning, but that it was after Breanna was born but before Chase was born. Father also testified he worked for Joseph Construction for about two weeks. Father could not remember having worked any other jobs. When asked if there was a reason he was not working during the periods when he was out of work, Father replied: "Well, I mean No, not really. I mean, I would look for jobs sometimes and couldn't find one." Father testified that he and Mother lived with Father's brother in Sevierville when they were not working.

Father was questioned about the Children's medical needs and when asked if he knew what the Children's special needs were, he stated: "Not fully, no. I mean, a lot of them is made up, I'm sure.... That's just what I think." Father testified that he took parenting classes but learned nothing from those classes. Father admitted that he is not available to parent the Children now and when asked if he had not been available to parent for some time, Father replied: "For three years, yeah." Father admitted that the last time he saw the Children was in February or March of 2006, just prior to his current incarceration. Father was asked if he had been told that he needed to support the Children after they were taken into custody and he stated: "No, sir. From my knowledge, they was supposed to provide at that point." When asked if he had gotten his license back, Father stated: "No.... I've made - - I've went forward to get them. I paid numerous tickets, and whatnot, to have them reinstated, yes." The sentence Father was serving at the time of trial was for seven years. Father testified that he would end up serving almost four years.

After trial, the Trial Court entered its Final Judgment for Termination of Parental Rights ("Final Judgment") on March 24, 2009 incorporating the Trial Court's oral findings of fact and conclusions of law as issued from the bench. In the March 24, 2009 Final Judgment, the Trial Court, *inter alia*, terminated Father's parental rights to the Children. Father filed a notice of appeal

on April 9, 2009. On April 22, 2009, Foster Mother filed a motion to amend the Final Judgment requesting that the Trial Court amend to include written findings of fact and conclusions of law in compliance with *In re: G.N.S.*, No. W2006-01437-COA-R3-PT, 2006 Tenn. App. LEXIS 784 (Tenn. Ct. App. Oct. 31, 2006), *no appl. perm. appeal filed*.

The Trial Court entered its Amended Final Judgment for Termination of Parental Rights (“Amended Final Judgment”) on April 22, 2009 finding and holding, *inter alia*:

Service of process was validly made against Respondent, [Father] in accordance with the Tennessee Rules of Civil Procedure. [Father] was well represented during this litigation and at trial. [Father] was physically present in the courtroom for all days of trial of this matter and was transported to Blount County, Tennessee on December 17, 2008, over two weeks before the beginning of the trial, and he remained in Blount County during the January 6-8, 2009 portion of the trial to allow him a generous opportunity to participate at trial and to prepare for trial with counsel, in person. [Father] was transported back to Blount County for the March portion of the trial, also.

There is no just reason for delay in entry of a Final Judgment against [Father] pursuant to TRCP 54.02.

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED:

A. All termination grounds alleged by the Petitioner, [Foster Mother], and the supporting facts are established by clear and convincing evidence. That termination of parental rights is in the best interest of the children and the supporting facts were also established by clear and convincing evidence. The court’s findings of facts and conclusions of law are as set out specifically as follows:

The children who are subject to this termination and adoption action are [Chase], ... and [Breanna],

[Mother], DOB: 11-12-1985 , is the mother of [Chase], and [Breanna].

[Father] testified before this court that he was never legally married to [Mother] because the person who performed the ceremony never filed the marriage certificate.

[Father], DOB 8-11-1984, is the legal father of [Chase] and [Breanna].

The Tennessee Department of Children’s Services became aware of the children’s plight when the child, [Breanna], was involved in a one car automobile wreck on November 14, 2005. Both of the parents and [Breanna] were in the car at the time of the wreck. [Father] was the driver of the vehicle. [Mother] was 34 weeks pregnant with [Chase], and went into labor as a result of the wreck. Approximately

two hours after the wreck, [Chase] was born six weeks prematurely. [Mother] and the newborn, [Chase], were transported from Blount Memorial Hospital to the University of Tennessee Medical Center.

At the time [Chase] was born, he tested positive for Opiates. He was hospitalized at the University of Tennessee Medical Center for fifteen days, and discharged on November 30, 2005 to his paternal grandmother ... under the Department of Children's Services supervision. [Chase] was later diagnosed with stomach ulcers and esophageal candiditis (yeast in his esophagus). He was Hepatitis C positive. Due to the poverty of his immune system, [Chase] was tested for HIV three (3) times but was consistently negative. [Chase] was constipated and in an inconsolable state for the first few months of his life. [Chase] was diagnosed with allergies, sensory processing disorder and gastro[-]esophageal reflux.

[Father] was arrested on November 28, 2005, after the November 14, 2005 wreck, for driving on a suspended license. [Father's] Tennessee driver's license had been suspended since January 13, 2003, and he continued to drive on a suspended license until his current incarceration. He has never had a valid driver's license as an adult.

Prior to the children's removal from their parents, the children lived in unstable conditions, were subject to the drug use and criminal behavior of their parents, did not receive adequate or appropriate nutrition, supervision, mental stimulation, or medical care. Prior to the intervention of the Tennessee Department of Children's Services, no one intervened on the children's behalf in the meaningful sustained way to allow for proper health, physical and emotional development.

The children were originally removed from [Father] and their mother, ... on November 29th, 2005. At the time, the parents and children were living in [Father's] mother's ... home.

The physical condition of the children at removal was very poor including:

- The car seat and children's clothing were extremely dirty and smelled strongly of cigarette smoke.
- The children were evaluated and found to have medical problems, behavioral and developmental problems.
- When brought into custody, [Breanna] needed glasses, tubes in both ears, and surgery to remove her tonsils and adenoids.
- [Breanna's] ears were infected so badly that her hearing was impaired.
- [Breanna] was also vision impaired.

The Department of Children's Services temporarily placed the children in the home of their paternal grandmother The children were removed from

[Grandmother's] care on December 2, 2005. The Department of Children's Services alleged that [Grandmother] did not follow the medical discharge instructions given to her at UT Hospital for [Chase] and because she was dishonest with Department of Children's Services about the children's whereabouts when Department of Children's Services inquired about who was babysitting for the children while [Grandmother] was at work. [Grandmother] disputed these claims in an intervening petition for adoption that was withdrawn in March of 2009. [Father] and [Mother] maintained their residence with [Grandmother] at the time of removal.

The Department made reasonable efforts to prevent removal of the children from their birth family.

- The Department of Children's Services initially placed the children with [Grandmother] in an attempt to keep the children in a relative placement, if and until the parents could regain custody. However, for the reasons stated above, that home was determined not to be a suitable placement.
- In an attempt to provide the parents with pertinent care information, medical professionals and DCS case workers discussed the children's special medical needs with the birth parents. Both birth parents refused to believe their children had any special medical or developmental problems.
- The Department of Children's Services prepared permanency plans for the birth parents, which placed in writing the steps each parent needed to complete in order to regain custody of their children. The permanency plan contained the following elements:

1. The parents were to obtain and maintain stable housing.

- [Father] has never maintained a personal residence away from his mother's home, a relative's home or incarceration.
- Since the children were removed, [Father] has made no reasonable efforts to provide a suitable home and has demonstrated a lack of concern for the children to such a degree that it appears unlikely that he will be able to provide a suitable home for the children at an early date.
- Note: Neither parent attended the first permanency plan meeting. It is unclear what happened for the second meeting or whether either party appeared. Respondent refused to sign the plan at the third meeting.
- By the fourth meeting, Department of Children's Services had changed the permanency plan "goal" to adoption instead of reunification.

2. The parents were to obtain a legal source of income. [Father] has been unable to document a legal source of income for more than two weeks at a time since his children have been born.

3. The parents were to obtain reliable transportation. [Father's] driver's license was revoked January 13, 2003 and remains so as of this date.

4. The parents were to complete drug and alcohol assessments and follow all recommendations. Both parents completed the assessments, but neither completed the recommendations.

5. The parents were to complete age appropriate parenting classes. [Father] claims to have completed such a course, he has no documentation to verify attendance or completion.

6. The parents were to obtain no further criminal charges. However, his charges continued:

- [Father] began his adult criminal history two days after his 18th birthday on August 13, 2002. Between the first incarceration until the current incarceration, [Father] spent over 160 days in jail for various offenses.
- [Father] was incarcerated most recently on March 25th, 2006 and is serving a seven year sentence. This sentence was received as a result of May 8, 2007 guilty plea before the Sevier County Criminal Court on thirteen theft and drug charges, (nine felony charges, four misdemeanor charges), for incidents occurring over a twenty (20) month period between July 28, 2004 and March 25, 2006, for an aggregate sentence of 7 years. [Breanna] was seven (7) months old when this period of criminal activity began and [Chase] was conceived and born during this period.
- [Father] has never been free from incarceration for more than 11 months since his adulthood. [Father] went to jail on March 25, 2006, one day after he failed to appear at the hospital for his daughter's (Breanna's) surgery.
- While [Father] has an extensive criminal history he was not consistently incarcerated for the first four months the children were in the custody of the Tennessee Department of Children's Services. The children were removed from the birth parents' custody on November 29, 2005 and [Father] was arrested March 25, 2006, almost exactly four (4) months after the children came into custody. [Father] is able bodied, yet [Father] never worked legally for over two weeks, to support his children. At times, [Father] lied to the

Department of Children's Services claiming to be employed when he was not.

- After the children's birth, he accumulated the following criminal charges:

<u>Charge Date</u>	<u>Offense</u>
February 26, 2004	Violation of Probation
April 1, 2004	Violation of Probation
August 11, 2004	Driving while revoked
September 10, 2004	Burglary
September 10, 2004	Possession of Stolen Property
October 21, 2004	Violation of Probation
December 9, 2004	Violation of Probation (2 nd offense)
December 21, 2004	Driving on a suspended license
July 20, 2005	Theft
September 22, 2005	Aggravated Burglary
September 22, 2005	Theft
November 3, 2005	Theft
November 14, 2005	Driving on Suspended License
January 17, 2006	Theft of Property
January 18, 2006	Contempt of Court
March 9, 2006	(Driving on a suspended license)
March 25, 2006	Theft of Property (\$60,000 and up)
	Burglary
	Theft
	Drugs without Prescription
	Drug/Possession of Adulterated drug
	Drug/Possession of Paraphernalia

7. The parents were given random drug screens at visits. Both parents subsequently had multiple positive drug tests. [Father] has a history of drug use including, but not limited to the following positive drug tests on the following dates after he became a father:

- Propoxyphene and marijuana on March 14, 2003.
- Marijuana on July 11, 2003
- Cocaine on July 9, 2004
- Opiates on December 7, 2005
- Opiates on February 1, 2006
- Opiates on February 15, 2006
- Opiates on February 21, 2006
- Benzodiazepines and opiates on March 1, 2006
- Opiates on March 8, 2006

- Benzodiazepines and opiates on March 21, 2006

There is no evidence of [Father] ever having a clean drug screen in his life.

8. Supervised visitation was offered in order to maintain the parent/child relationship.

- [Father] did not visit the child, [Chase] at the hospital from November 20, 2005 through November 29, 2005.
- Visits were offered until both parents became incarcerated.

[Chase] and [Breanna] were placed with the Petitioner, [Foster Mother], a Tennessee Department of Children's Services foster parent, on December 2, 2005.

In its order from the hearing on April 26, 2006, the Sevier County Juvenile Court found that the Tennessee Department of Children's Services made reasonable efforts to prevent the children's removal and for 4 months following removal, the Department of Children's Services made reasonable efforts to assist [Father] to establish a suitable home for [Chase] and [Breanna]. Juvenile Court found that the [Mother] and [Father] were not in compliance with the permanency plan, and further found that the Department of Children's Services made reasonable efforts to provide the parents with counseling, alcohol and drug assessments and parenting classes, and that the parents had not made progress. The Court found that there was a need for foster care.

The children were found to be dependent and neglected by the Sevier County Juvenile Court on July 5, 2006, the court's order being filed August 1, 2006.

Petitioner's action for adoption and for termination of parental rights was filed on July 5, 2007.

[Mother] was personally served with this action on July 28, 2007. [Mother's] parental rights to [Chase] and [Breanna] were terminated by final default judgment on October 2, 2007. [Mother] was not present at trial. Her current whereabouts were unknown. [Mother] was believed to have been pregnant with another child on May 8, 2007. The result of that pregnancy is unknown.

[Father] was personally served with this action on July 13, 2007 at the Sevier County Jail, Sevierville, Tennessee. Service of process was validly made against [Father] in accordance with the Tennessee Rules of Civil Procedure. Other than being transported for the purpose of this trial, [Father] has been incarcerated at West Tennessee State Penitentiary, Henning[,] Tennessee from July, 2007 to February, 2008 and then transferred to Whiteville Correctional Facility, Whiteville, Tennessee where he remains.

* * *

Termination of Parental Rights

With respect to the grounds for termination of [Father's] parental rights, this court finds, four grounds have been proven, all based upon clear and convincing evidence. They are as follows:

- 1. [Father] was incarcerated at the time of the institution of an action or proceeding to declare the children to be abandoned, and [Father] has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding [Father's] incarceration.**

The Petition for Adoption was filed on July 5, 2007. It is undisputed that [Father] was incarcerated most recently on March 25, 2006 and has been continuously incarcerated since that time. He concedes that for the four months immediately preceding that date, he provided the Department of Children's Services and the children with no monetary support. He testified that he brought a couple of toys for Breanna, and took home one to keep at his house. He testified that he brought Breanna clothes once, but could not specify what articles of clothes or sizes. This Court only finds evidence of very meager gifts of clothing for Breanna and no support for Chase.

[Father] could not testify with any detail or specificity about his employment, income or support of his children either while he lived with Breanna and her pregnant mother or after the children were removed. He repeatedly testified that he did not remember. He could only generally say that he was sometimes employed, and did support his children. [Father] is able bodied. He appears to have been primarily employed as a thief. This court finds that [Father's] testimony regarding his support of [Breanna] is minimal, token at best, and that his testimony is not credible. [Father] could state no specific time, other than the toys and clothes during visits, that he ever supported [Chase].

[Father] provided no health or dental insurance for [Chase] or for [Breanna]. The only insurance that the children ever had is TennCare.

Court ordered support was set on February 7, 2007, with retroactive support being ordered from November 29, 2005. He paid no monetary support from removal of the children on November 29, 2005 to the present.

[Father] acknowledged that he was able-bodied. There is no evidence of a legitimate impediment to his ability to support his children.

Also, during the four month period immediately prior to incarceration, he perpetrated the following crimes for which he later pled guilty: four counts of theft of property, burglary of a motor vehicle and possession of drug paraphernalia. He tested positive for drugs at least seven (7) times during the four months before he was incarcerated. Grounds exist for termination of [Father's] parental rights pursuant to T.C.A. § 36-1-102(1)(A)(iv).

2. [Father] has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the children.

That conduct includes failure to materially provide for the children, failure to attend [to] the children's daily care and medical needs, as evidenced by the state of the children's health at the time of their removal from [Father]. [Father's] continued drug abuse, habitual criminal behavior that only stops during periods of incarceration; defiance and lack of cooperation with the Department of Children's Services and other people attempting to assist him in improving himself as a parent. Such behavior constitutes a wanton disregard for the welfare of his children. Therefore, grounds exist for termination of [Father's] parental rights under T.C.A. § 36-1-102(1)(A)(iv).

3. The children have been removed from the home of the [Father] by order of a court for a period of six (6) months (since November 29, 2005) and

- i. The conditions that led to the children's removal or other conditions that in all reasonable probability would cause the children to be subjected to further abuse or neglect and that, therefore, prevent the children's safe return to the care of the [Father], still persist.**
- ii. There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the [Father] in the near future.**
- iii. The continuation of the parent and child relationship greatly diminishes the children's chances of early integration into a safe, stable and permanent home.**

The record reflects removal for over six months. The children have now been out of [Father's] care by court order for over three (3) years. As his consistent incarceration reflects, [Father] continued his criminal behavior. [Father] did not complete any of the requirements of his permanency plans. [Father] was uncooperative with the Department as they offered their assistance and direction. As

it has been three years with no improvement by the [Father], there is little likelihood that his behavior or circumstances will be remedied soon. [Father] is currently serving a seven year sentence. A return of the children to the parent is unsafe. [Father] does not know how to provide a home or to be a parent. In his custody, the children would be subjected to further abuse or neglect. These children cannot obtain permanence in the only stable home they have ever known, unless the [Father's] parental rights are terminated.

The conditions that led to the children's removal were [Father's] inability to provide safe and legal transportation, his inability to meet their medical needs, his habitual criminal behavior and frequent incarcerations, his unstable housing, his long-standing drug problem, his refusal to acknowledge and address his drug problem and his lack of willingness to accept assistance to cure these shortcomings.

These children do not know [Father]. He has not lived with [Breanna] in four years. He has never lived with or acted as a father to [Chase]. He has given this court no reason to expect or hope for an improvement in his behavior or life choices. The children cannot find permanence as long as [Father] has parental rights.

Therefore, grounds exist for termination of [Father's] parental rights under ... T.C.A. § 36-1-113(g)(3).

- 4. The children have been removed from the home of the parent as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. TCA § 36-1-102(1)(A)(ii).**

The children were removed from the home of the [Father] on November 29, 2005, and placed in the custody of the Department of Children's Services. Prior to removal, "Both parents were uncooperative and the dad was threatening and belligerent".

A Petition for Temporary Custody was thereafter filed in the Juvenile Court. At a hearing held on July 5, 2006, the Court found that the children were dependent and neglected children as to [Father], as defined in § 37-1-102. The juvenile court also found that the department made reasonable efforts to prevent removal of the children or that the circumstances of the children's situation prevented reasonable efforts from being made prior to the children's removal. [Father] has exhibited little or no effort to comply with the permanency plans established by the Department of Children's Services, and conditions leading to the removal of the minor children persisted. For at least a period of four (4) months following the removal, the department has made reasonable efforts to assist the parent to establish a suitable home for the children. [Father] lied to the Department about his employment and residence. He left the burden of contact on the Department and did not contact them. He was frequently belligerent to the Department, the GAL and foster parent. The Department scheduled visits, drug testing and offered a drug evaluation. But because [Father] consistently denied a drug problem, in spite of only positive drug screens, drug treatment was not a viable plan for him. He did not cure his housing, employment, or transportation problems. He did not develop an understanding of the children's medical needs, or insight into his prior patterns of behavior and poor choices. [Father] failed to make reasonable efforts to provide a suitable home and has demonstrated a lack of concern for the children to such a degree that it appears unlikely that he will be able to provide a suitable home for the children at an early date. The Department provided [Father] with a written detailed plan of what was required. [Father] failed to fully complete any item on the plan. [Father] was uncooperative and resentful. The Department continued to follow up with [Father] to promote contact with his children and to encourage the completion of his permanency plan until the [Father] went to prison.

Department of Children's Services' efforts were reasonable. [Father] did not make reasonable efforts to provide a suitable home for [Chase] and [Breanna]. He did not cooperate with the permanency plans. [Father] did not take advantage of opportunities he had to visit, to act appropriately at visitations and other meetings. Consultations and conferences that were provided by the Department for reunification with the father were not possible. He gives this court no reason to expect future behavior to be different from his past behavior.

Therefore, grounds exist for termination of [Father's] parental rights under TCA § 36-1-102(1)(A)(ii).

This Court finds a broad pattern of conduct that renders the father unfit based upon his criminal behavior, his criminal history, including, but not limited to drug use, and additional failure to provide stable housing and employment.

Best Interest

I have considered the following factors set out in TCA 36-1-113(i) regarding determination of the children's best interests:

1. Whether parent has made an adjustment of circumstances or conduct or conditions to make it safe and in the children's best interest to be in the home of the parent.
2. Whether the parent failed to effect a lasting adjustment after reasonable efforts were made available by the Dept for such a duration of time that lasting adjustment does not reasonably appear possible.
3. Whether the parent maintained regular visitation or other contact with the children.
4. Whether a meaningful relationship has otherwise been established between the parent and the child.
5. The effect a change of caretakers and physical environment is likely to have on the children's emotional, psychological and medical condition.
6. Whether the parent or other person residing with the parent has shown brutality, physical, sexual, emotional or psychological abuse or neglect toward the child or another child in the household.
7. Whether the physical environment of the parent's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent consistently unable to care for the children in a safe and stable manner.
8. Whether the parent's mental and or emotional status would be detrimental to the children or prevent the parent from effectively providing the safe and stable care and supervision for the children.
9. Whether the parent has paid child support consistent with the child support guidelines.

With respect to the best interests of [Chase] and [Breanna], this court further finds, based upon clear and convincing evidence, as follows:

- [Foster Mother's] home was evaluated and approved by both the state agency, Tennessee Department of Children's Services and by a private agency, Harmony Adoptions of Tennessee, Inc. Both agencies approved [Foster Mother's]

home for adoption and testified in support of the adoption of [Chase] and [Breanna] by [Foster Mother]

- The children's paternal grandmother, the intervening Petitioner, admitted that it would be in the children's best interest for the parental rights of [Father] to be terminated.
- The children also have a positive familial relationship with [Foster Mother's] extended family, friends and church family. Adoption of Chase and Breanna ... by [Foster Mother] serves the children's best interest by continuing stable relationships, attentive medical care, appropriate daily care and religious education.
- The children have very significant needs, medically and in terms of the nurture they need that could not be facilitated by the return of these children to their father. There would be negative consequences to remove these children from their now-established home and routine.
- Based upon clear and convincing evidence, termination of the [Father's] parental rights is in the children's best interest, pursuant to T.C.A. § 36-1-113(c)(2). The foster mother is a fit and appropriate placement for the children. The children are thriving in her care. Their medical needs persist but they are receiving the necessary ... care and devoted attention in the foster mother's home. The children are well bonded to the foster mother. Expert testimony has established that there is a quality of bond that bodes well that there will be a secure and trusting relationship between these children and [Foster Mother]. [Foster Mother] is a parental figure to the children. She loves them; she provides for them. She is able to financially provide for them, including not only with respect to her income, but with respect to health insurance; and to meet the nurturing needs that these children have. The Court has no concerns about the children's long-term stability in [Foster Mother's] home. Disruption of that bond would be destructive to the children's emotional and social development, and very likely, physical health. The prospects for the children to attain their full potential in the foster mother's home are excellent.
- Based upon clear and convincing evidence, this court further finds that the adoption of [Chase] and [Breanna] by [Foster Mother] is in the children's best interest.

B. Termination of the [Father's] parental rights is in the manifest best interest of the children.

C. All parental rights and responsibilities of [Father] with respect to [Breanna] and [Chase] shall be and are fully and forever terminated by this final judgment.

(citations omitted).

Discussion

Although not stated exactly as such, Father raises five issues on appeal: 1) whether the Trial Court had jurisdiction to enter the Amended Final Judgment after Father filed a notice of appeal; 2) whether the Trial Court's Final Judgment was defective; 3) whether the Trial Court erred in terminating Father's parental rights to the Children pursuant to Tenn. Code Ann. § 36-1-113(g)(1); 4) whether the Trial Court erred in terminating Father's parental rights to the Children pursuant to Tenn. Code Ann. § 36-1-113(g)(3); and, 5) whether the Trial Court erred in finding that it was in the best interest of the Children for Father's parental rights to be terminated.

Our Supreme Court reiterated the standard of review for cases involving termination of parental rights stating:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

In *Department of Children's Services v. D.G.S.L.*, this Court discussed the relevant burden of proof in cases involving termination of parental rights stating:

It is well established that "parents have a fundamental right to the care, custody, and control of their children." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). "However, this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute." *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not terminated. *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Similarly, before the court may inquire as to whether termination of parental rights is in the best interests of the child, the court must first determine that the grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c).

Dep't of Children's Servs. v. D.G.S.L., No. E2001-00742-COA-R3-JV, 2001 Tenn. App. LEXIS 941, at **16-17 (Tenn. Ct. App. Dec. 28, 2001), *no appl. perm. appeal filed*. Clear and convincing evidence supporting any single ground will justify a termination order. *E.g., In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

We first address whether the Trial Court had jurisdiction to enter the Amended Final Judgment after Father filed a notice of appeal. With respect to this issue, Tenn. R. App. P. 4 provides, in pertinent part:

(b) Termination by Specified Timely Motions in Civil Actions. – In a civil action, if a timely motion under the Tennessee Rules of Civil Procedure is filed in the trial court by any party: (1) under Rule 50.02 for judgment in accordance with a motion for a directed verdict; (2) under Rule 50.02 to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 59.02 for a new trial; (4) under Rule 59.04 to alter or amend the judgment; the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion.

* * *

(e) Effect of Specified Timely Motions on Trial Court's Jurisdiction. – The trial court retains jurisdiction over the case pending the court's ruling on any timely filed motion specified in subparagraph (b) or (c) of this rule. A notice of appeal filed prior to the trial court's ruling on a timely specified motion shall be deemed to be premature and shall be treated as filed after the entry of the order disposing of the motion and on the day thereof....

Tenn. R. App. P. 4.

The Trial Court entered its Final Judgment on March 24, 2009. Father filed a notice of appeal on April 9, 2009. On April 22, 2009, Foster Mother filed a motion to amend the Final Judgment requesting that the Trial Court amend its Final Judgment to include written findings of fact and conclusions of law. Father argues that the Trial Court lost jurisdiction when Father filed his notice of appeal. Father is mistaken. Foster Mother filed a timely motion to alter or amend. As such, under Tenn. R. App. P. 4, the Trial Court retained jurisdiction to rule upon Foster Mother's motion. This issue is without merit.

We next address whether the Trial Court's Final Judgment was defective. Father argues that the Trial Court's Final Judgment was defective because it incorporated oral findings of fact. The Trial Court, however, retained jurisdiction, as discussed above, pursuant to Foster Mother's timely filed motion to alter or amend, and the Trial Court amended the Final Judgment to include written findings of fact. As the Trial Court amended its judgment to correct the very thing that Father claims made the Final Judgment defective, this issue also lacks merit.

We next discuss whether the Trial Court erred in terminating Father's parental rights to the Children pursuant to Tenn. Code Ann. § 36-1-113(g)(1). As pertinent to this issue, Tenn. Code Ann. §§ 36-1-113(g)(1) provides:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

Tenn. Code Ann. § 36-1-113(g)(1) (Supp. 2009). In pertinent part, Tenn. Code Ann. § 36-1-102 provides:

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:

* * *

(ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following

the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date;

* * *

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child; or

Tenn. Code Ann. § 36-1-102(1)(A) (Supp. 2009).

As discussed fully above, the record reveals, and the Trial Court found, that clear and convincing evidence was proven that grounds existed to terminate Father's parental rights to the Children for abandonment under Tenn. Code Ann. § 36-1-113(g)(1) pursuant to Tenn. Code Ann. §§ 36-1-102(1)(A)(ii) and (iv). The evidence does not preponderate against these findings.

We turn next to the issue of whether the Trial Court erred in terminating Father's parental rights to the Children pursuant to Tenn. Code Ann. § 36-1-113(g)(3). In pertinent part, Tenn. Code Ann. § 36-1-113(g)(3) provides:

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home;

Tenn. Code Ann. § 36-1-113(g)(3) (Supp. 2009).

As discussed fully above, the record reveals, and the Trial Court found, that clear and convincing evidence was proven that grounds existed to terminate Father's parental rights to the Children under Tenn. Code Ann. § 36-1-113(g)(3). The evidence does not preponderate against these findings.

Finally, we address the Trial Court's determination that clear and convincing evidence had shown that termination of Father's parental rights was in the Children's best interest. The pertinent statutory provision is Tenn. Code Ann. § 36-1-113(i) which provides:

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is

such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i) (Supp. 2009).

As discussed more fully above, the Trial Court considered the relevant statutory provisions and made detailed and specific findings supporting its holding that clear and convincing evidence existed that the termination of Father's parental rights was in the best interest of the Children. The evidence does not preponderate against these findings, and this issue also is without merit.

As grounds for the termination of Father's parental rights were proven by clear and convincing evidence and it was shown by clear and convincing evidence that it was in the Children's best interest for Father's parental rights to be terminated, we affirm the Trial Court's April 22, 2009 Amended Final Judgment.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for collection of the costs below. Father being indigent, the costs on appeal are assessed against the Appellee, the State of Tennessee Department of Children's Services.

D. MICHAEL SWINEY, JUDGE